

### **REMARKS**

Claims 1 – 6 and 8 - 20 were pending in this application.

Claims 1 – 6 and 8 - 20 were rejected.

Claims 1-3, 5, 8, 9, 11, 12, 17 and 18 are amended

### **I. 35 USC 103(a) Rejections**

**The Examiner has rejected Claims 1 -6, 8-9 and 12-18 under 35 USC 103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0107117 to Denny in view of U.S. Patent Application Publication No. 2003/0074225 to Borsand.**

The rejected claims contain two independent claims, which are Claim 1 and Claim 12. Both Claim 1 and Claim 12 are believed to be distinguishable over both the Denny and Borsand references as is explained below.

#### **Claim 1**

**Claim 1** sets forth a method of analyzing changes made by a pharmacist when filling a medical prescription.

It will be understood that when a pharmacist fills a prescription, the pharmacist often changes the prescription to suit circumstances. For instance, if a prescription calls for 10 pills of 100 grams each and the pharmacy only has 50 gram pills, the pharmacist may fill the prescription with 20 pills of the 50 grams pills and instruct the patient to take two pills at a time. Similarly, many pharmaceuticals are made by more than one company. A pharmacist often uses his/her discretion in selecting the pharmaceutical to give to the patient.

Although the use of a pharmacist's discretion is commonplace, it can lead to mistakes, and to fraud. The present invention methodology is intended to detect when a mistake or fraud

occurs. To achieve this method, a database is provided. In a physician's office, a physician examines a patient and writes a prescription for that patient. The prescription is initially unfilled. Unfilled prescription data that corresponds to the prescription is entered into the database. The unfilled prescription data contains information regarding a recommended pharmaceutical type and a recommended quantity recommended by the physician in the prescription.

The patient travels to a pharmacy to have the prescription filled. At the pharmacy, the unfilled prescription data is retrieved from the database. Using the retrieved data, the prescription is filled. The filled prescription contains a presented pharmaceutical type in a presented quantity. Due to the discretion of the pharmacist, the actual pharmaceutical presented and its quantity may not correspond with the unfilled prescription data. The discrepancy may be justified or unjustified and can be caused by mistake, fraud or simple pharmacist choice.

**Data corresponding to how the prescription is actually filled is entered into the database by the pharmacist.** The filled prescription data includes information regarding the actual presented pharmaceutical type and its quantity.

**The filled prescription data is analyzed to determine if differences between the filled prescription data and the unfilled prescription data are justified.** If the discrepancy is unjustified, then a warning is generated. The warning indicates that the prescription has been wrongly varied in some manner. The warning is sent to the physician who first wrote the prescription. The physician, upon receipt of the warning, can contact the patient or pharmacist to correct and mistake.

**The Denny reference** shows a database system for ensuring that a prescription is properly filled. Like the present invention, a physician enters a prescription into a database. Furthermore, like the present invention, a pharmacist recalls the prescription from the database. In this manner, the need for a handwritten prescription is eliminated.

However, the present invention method significantly differs from the Denny reference in how the data from the database is used. As is claimed by Claim 1 of the present application, the pharmacist is required to enter any changes to the prescription that the pharmacist may have made using the pharmacist's discretion. The filled prescription data contains information

regarding how the pharmacist changed the prescription. The data about the changed prescription is analyzed to see if the change is reasonable. If unreasonable because of mistake or fraud, a warning is sent back to the physician who wrote the prescription.

**The Denny reference makes no disclosure concerning the method step of analyzing changes in the way a pharmacist alters a prescription to determine if the change is justifiable discretion or an unjustifiable mistake.** In the Denny reference, it is clearly stated that the initial prescription is read from a database. The initial prescription comes with a "confirmation code". The confirmation code is entered to inform the database that the prescription information was received. (See Denny, paragraph 0038).

The Denny reference makes no disclosure of entering any form of information regarding how a pharmacist may have changed the prescription. Likewise, the Denny reference makes no disclosure concerning the step of analyzing the pharmacist's change to see if it is merely justifiable discretion or an unjustifiable mistake.

As applied specifically to the wording of Claim 1, the Denny reference fails to disclose the method step of

***"entering filled prescription data into said database, wherein said filled prescription data identifies said at least one pharmaceutical and volume actually provided by said pharmacist as said filled prescription;***

Likewise, the Denny reference fails to disclose the claimed method step

***"comparing said filled prescription data to said unfilled prescription data to identify discretion exercised by said pharmacist; and"***

Lastly, the Denny reference fails to disclose the claimed method step of

***"generating a warning if said discretion exercised by said pharmacist is unjustified."***

The Denny patent only discloses that a pharmacy enters data about the confirmation code that

comes with the prescription. The initial prescription comes with a "confirmation code". The confirmation code is entered to inform the database that the prescription information was received. (See earlier in Denny, paragraph 0038). Again, the Denny patent makes no disclosure of entering any information concerning how the prescription was altered by the pharmacist when filled.

The Examiner cites the Denny reference in combination with the Borsand reference. The Borsand reference presents a system for tracking prescriptions to make the communications between a patient and a Pharmacy Benefit Manager (PBM) more efficient. However, like the Denny reference, the Borsand patent does not disclose a database where a pharmacist enters changes in a prescription caused by the use of the pharmacist's discretion. Furthermore, like Denny, the Borsand patent discloses nothing about analyzing the pharmacist's actions to determine if the change made by the pharmacist was either justified or not justified. Lastly, like Denny, the Borsand reference makes no disclosure concerning the creation of a warning if the changes made by a pharmacist were unjustified.

In combination, it is clear that neither the Denny reference nor the Borsand reference disclose or suggest the method of Claim 1. Consequently, the combination fails to support a 35 USC 103 rejection. It is therefore requested that the 35 USC 103 rejection as applied to Claim 1 and its dependent claims be withdrawn.

#### Claim 12

Claim 1 sets forth a method of verifying changes made by a pharmacist to a prescription in order to reduce fraud and mistake.

In Claim 12, it is assumed that the pharmacist uses his/her discretion and alters a prescription when filling the prescription. More specifically Claim 12 contains the method step of

***"having a pharmacist at said pharmacy fill said unfilled prescription, wherein said pharmacist exercises discretion to alter said prescription so that the filled prescription varies from said unfilled prescription data;"***

The discretion exercised by the pharmacist is entered into a database and analyzed to see if the

change was either justified or not justified. A warning is generated if the pharmacist's discretion turns out to be unjustified.

As has been previously explained, the Denny and Borsand references do not disclose or suggest a database where a pharmacist enters changes in a prescription caused by the use of the pharmacist's discretion. Furthermore, the Denny and Borsand references fail to disclose anything about analyzing the pharmacist's actions to determine if the change made by the pharmacist was either justified or not justified. Lastly, like Denny, the Borsand reference make no disclosure concerning the creation of a warning if the changes made by a pharmacist were unjustified.

In combination, it is clear that neither the Denny reference nor the Borsand reference disclose or suggest the method of Claim 12. Consequently, the combination fails to support a 35 USC 103 rejection. It is therefore requested that the 35 USC 103 rejection as applied to Claim 12 and its dependent claims be withdrawn.

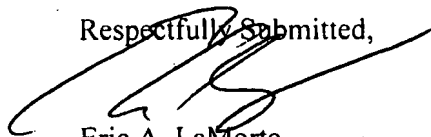
**The Examiner has rejected Claims 10-11 and 19-20 under 35 USC 103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0107117 to Denny in view of U.S. Patent Application Publication No. 2003/0074225 to Borsand and in further view of U.S. Patent Publication 2001/0047281.**

The differences between the independent claims and the combined Denny and Borsand patents have been previously explained. The Examiner cites the Keresman patent to show that biometric identification is used to identify health care professionals. However, the Keresman patent does not disclose or suggest any system where a pharmacist enters information regarding how the pharmacist altered a prescription. Accordingly, the Keresman patent does not disclose the deficiencies of the Denny patent or the Borsand patent as applied to the independent claims. Claims 10-11 and 19-20 are therefore believed to be patentable since they depend from, and further define, allowable base claims.

### **III. SUMMARY**

Having fully distinguished the pending claims over the cited art, this application is believed to stand in condition for allowance. However, if the Examiner is of the opinion that such action cannot be taken, the Examiner is requested to call the applicant's attorney at (215) 321-6772 in order that any outstanding issues may be resolved without the necessity of issuing a further Office Action.

Respectfully Submitted,



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